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C.C., Appellant)	
)	
and)	Docket No. 21-0715
)	Issued: December 20, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Pittsburgh, PA, Employer)	
)	

Case Submitted on the Record

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted May 12, 2020 employment incident.

FACTUAL HISTORY

On May 27, 2020 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left shoulder on May 12, 2020 due to lifting and turning his arm when delivering packages while in the performance of duty. He stopped work on May 13, 2020.

In a duty status report (Form CA-17) dated May 29, 2020, Dr. John Kalata, an osteopath and family medicine specialist, diagnosed derangement of the left shoulder due to lifting packages. In a subsequent Form CA-17 dated June 4, 2020, he diagnosed a left shoulder rotator cuff tear due to lifting packages.

In a July 10, 2020 development letter, OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond.

In a July 21, 2020 response to OWCP's questionnaire, appellant related that on May 12, 2020 the rear slide wheel detached from the door of his postal vehicle, which made the door very difficult to pull down. He used the door over 40 times that day and was also reaching back repetitively throughout the day to grab packages with his left arm. Appellant asserted that this caused his left shoulder to become tired and painful, which worsened throughout the day. He noted that, by the end of his shift, he was primarily using his right arm because he was not able to use the left shoulder or arm to turn the door lock or steer the vehicle.

Physical therapy notes dated between July 1 and 24, 2020 outlined various treatments to the left shoulder.

By decision dated August 12, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a left shoulder condition causally related to the accepted May 12, 2020 employment incident. Consequently, it concluded that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

OWCP continued to receive medical evidence, including a June 4, 2020 medical report by Dr. Kalata, noting that appellant related complaints of left shoulder pain which he attributed to extreme overuse of the left shoulder during extended hours of driving and delivering packages. Dr. Kalata noted that magnetic resonance imaging (MRI) studies of the left shoulder were consistent with a partial rotator cuff tear, and that his physical examination revealed abnormalities in range of motion and strength within the rotator cuff. He diagnosed a left partial rotator cuff tear, prescribed prednisone, and referred him to Dr. Joshua Tuck, an orthopedic surgeon.

In a medical report dated June 16, 2020, Dr. Tuck indicated that appellant related a history of shoulder pain that he attributed to opening an overhead truck door several times while working.

He also noted a history of a prior left shoulder dislocation approximately 20 years ago. Dr. Tuck's physical examination was consistent with pathology in the rotator cuff, glenoid labrum, and acromioclavicular (AC) joint. He reviewed x-rays and MRI scan studies and diagnosed impingement and pain in the left shoulder.

In follow-up visits on July 2 and 14, 2020, Dr. Kalata noted that appellant's left shoulder was improving following an injection by Dr. Tuck. He continued to note a history of left shoulder pain due to driving and delivering a significantly increased number of packages as a postal worker.

In a report dated August 11, 2020, Dr. Tuck noted that appellant's left shoulder pain had returned following the injection, and that he was not achieving any improvement with physical therapy. He diagnosed impingement with pain in the left shoulder and recommended surgery. Dr. Tuck opined that the injury was work related.

On August 19, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received a May 15, 2020 report by Dr. Kalata, who noted that appellant related complaints of pain and clicking in the left shoulder, which he attributed to lifting packages at work.

OWCP also received additional physical therapy notes for dates of service between June 29 and August 6, 2020.

In a September 8, 2020 treatment note, Dr. Kalata indicated that appellant was scheduled for surgery to the left shoulder by Dr. Tuck.

In an operative note dated September 16, 2020, Dr. Tuck indicated that he performed left shoulder arthroscopic rotator cuff repair, biceps tenodesis, and subacromial decompression. The postoperative diagnoses were left shoulder full-thickness anterior supraspinatus tear, type 2 superior labrum anterior to posterior (SLAP) lesion, and Hill-Sachs lesion of the humeral head.

A telephone hearing was held on October 14, 2020, and the hearing representative held the record open for 30 days.

In a narrative report dated October 17, 2020, Dr. Kalata outlined his treatment of appellant and his review of Dr. Tuck's reports. He noted that the left shoulder was improving following the September 16, 2020 surgery, and that appellant had a remote history of a left shoulder dislocation 20 years ago, which resolved with nonoperative care. Dr. Kalata diagnosed left shoulder pain and impingement and opined that it was apparent that these conditions were caused by repetitive opening of his postal vehicle door. He explained that the repetitive forces overloaded the capacity that his shoulder could bear at work.

By decision dated November 19, 2020, the hearing representative vacated the January 30, 2020 decision and remanded the case for OWCP to provide the employing establishment a copy of the transcript and appellant's answers to its development questionnaire, and for the employing establishment to submit a statement if they concur or disagree with his statements therein.

In accordance with the hearing representatives instructions, on December 3, 2020 OWCP provided a copy of appellant's development questionnaire responses and the hearing transcript to the employing establishment. No response was received.

OWCP thereafter received additional physical therapy notes for dates of service between July 24 and August 10, 2020.

By *de novo* decision dated February 22, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his left shoulder condition was causally related to the accepted May 12, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

³ *Id.*

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

In his narrative report dated October 17, 2020, Dr. Kalata outlined appellant's treatment and his review of Dr. Tuck's reports. He diagnosed left shoulder pain and impingement and opined that these conditions were caused by repetitive opening of appellant's postal vehicle door. Dr. Kalata explained that the repetitive forces overloaded the capacity that his shoulder could bear at work.

Dr. Kalata, in his initial reports dated June 4 and 16, 2020, explained the mechanism of appellant's injuries as repetitive reaching and lifting packages with his left arm. In his October 17, 2020 narrative, Dr. Kalata again explained the mechanism of the injuries and referenced the reports of Dr. Tuck, which supported his diagnoses and opinion. He opined that appellant's left shoulder conditions were caused by repetitive opening of the door to his work truck. The Board finds that, although his reports are insufficient to discharge appellant's burden of proof that his diagnosed conditions were caused or aggravated by the accepted May 12, 2020 employment incident, his reports raise an inference of causal relationship and constitute substantial, uncontroverted evidence in support of the claim and provide sufficient rationale to require further development of the case record by OWCP.¹⁰

It is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

The Board will therefore remand the case for further development of the medical evidence. On remand, OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused or aggravated a diagnosed medical condition. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Kalata. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, *supra* note 7; *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ *B.F.*, *id.*; *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 20, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board